

STATE PUBLIC DEFENDER[493]

Adopted and Filed

Rule making related to claims submission and review

The State Public Defender hereby amends Chapter 7, “Definitions,” Chapter 12, “Claims for Indigent Defense Services,” and Chapter 13, “Claims for Other Professional Services,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 13B.4(8).

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapters 13B and 815.

Purpose and Summary

These amendments update a number of rules to conform to statutory changes enacted during the 2019 Legislative Session and otherwise add efficiencies to the claims review process for indigent defense services. These amendments clarify that all probation revocation proceedings involving a single client constitute a single case for purposes of the rules and clarify the definition of “date of service” to conform to existing practice. The amendments also update the rates of compensation to conform to the rates enacted during the 2019 Legislative Session by 2019 Iowa Acts, Senate File 615, and to convert the attorney fee case limits to hourly rates rather than dollar limits. The amendments conform the rules to 2019 Iowa Acts, Senate File 590, regarding claims made for services provided to indigent persons and costs incurred by privately retained attorneys representing indigent persons. The amendments also require online submission of miscellaneous claims, effective March 1, 2020. Other technical and corrective changes are made to the rules governing the submission of claims relating to the provision of services to indigent persons, intended to promote efficiency and clarity in the claims review process.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on November 20, 2019, as **ARC 4778C**.

The Iowa State Bar Association (Association) submitted comments, both orally at the meeting of the Administrative Rules Review Committee on December 10, 2019, and in writing.

The Association’s major concern at the meeting was the \$75 cap on the hourly rate investigators could charge. The Association’s representative said there might be instances in which an investigator would not be available at the \$75 per hour rate. In response to the comment, the Office of the State Public Defender has added an exception to the \$75 per hour cap to allow, in exceptional circumstances and with prior approval of the State Public Defender upon a showing of reasonable necessity, the \$75 per hour cap to be exceeded.

In subsequent written comments, the Association did not address the \$75 per hour cap but commented that it did not favor the proposed changes in the rule to billing submission deadlines for investigators. In response, the Office explained that the intent of the rule is to give certainty to private investigators as to when they need to submit their claims. The amendment allows a private investigator to bill as often as necessary and when the private investigator determines (based on the private investigator’s own invoice) the investigative services are completed. After a billing, if more services are necessary, the private investigator can submit another claim. This can be done without an additional court order as long as the private investigator is under the cap set in the initial order. This action is implementation by agency rule of actual practice, which has been working efficiently.

The Office also received a question in a communication from a Parole Board administrative law judge and a comment from a private contract attorney regarding the “date of service” rule as it applies to parole hearings. The concern in the comment from the private contract attorney was that the rule as amended would not allow for billing after continued disposition hearings. In response, the Office has modified the rule making to allow for billing after a continued disposition hearing in probation, parole and contempt proceedings.

The same private contract attorney expressed concern regarding the proposed elimination of claims in the proposed rules for in-county mileage expense. In response to the concerns expressed in that comment, and similar comments expressed by members of the Administrative Rules Review Committee at the December 10 meeting, the proposed rule in the Notice eliminating the ability of contract attorneys to claim mileage expense for in-county travel was not adopted.

The Office also received a communication or comment forwarded by a private attorney after the time for filing comments had passed. The comment or concern was related to the merits/constitutionality of 2019 Iowa Acts, Senate File 590. As such, that comment or concern was beyond the scope of the rule implementing 2019 Iowa Acts, Senate File 590, as enacted by the Legislature.

There are three changes from the Notice. First, in Item 2 (paragraph 12.2(3)“a”), there is added an additional date of service in the case of probation, parole or contempt proceeding. The new date of service is the filing of a continued disposition. Also, in a subsequent review or compliance proceeding under the same appointment order, a new date of service may be created even if a new court appearance is not required.

Second, in Item 8 (paragraph 12.8(1)“a”), the language prohibiting contract attorneys from claiming in-county mileage was not adopted. The change was made in response to comments by some Administrative Rules Review Committee members and a similar comment from a private attorney that the prohibition might adversely affect the availability of private attorneys who are willing to accept court appointments. The rule continues the practice of allowing attorneys to charge for in-county and out-of-county mileage in appropriate cases.

Third, the Office added language in Item 9 (subparagraph 13.2(1)“b”(3)), essentially allowing an exception to the \$75 per hour cap on an investigator’s hourly rate when there are exceptional circumstances and with the prior approval of the State Public Defender upon a showing of reasonable necessity. The exception ensures the availability of an investigator in all appropriate cases. This change was made in response to comments by some Administrative Rules Review Committee members and comments by a representative of the Association at the December 10 meeting.

Adoption of Rule Making

This rule making was adopted by the State Public Defender on December 26, 2019.

Fiscal Impact

This rule making has no substantial fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Office for a waiver of the discretionary provisions, if any, pursuant to 493—Chapter 6.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or

group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on March 1, 2020.

The following rule-making actions are adopted:

ITEM 1. Amend rule **493—7.1(13B,815)**, definition of “Case,” as follows:

“Case” means all charges or allegations arising from the same transaction or occurrence or contained in the same trial information or indictment in a criminal proceeding or in the same petition in a civil or juvenile proceeding. A probation violation or contempt proceeding is a case separate from the case out of which the violation or contempt arose and separate from a criminal case alleging new criminal charges. Multiple probation revocation proceedings pending at the same time, involving the same client, and arising from the same transaction or occurrence are a single “case.”

ITEM 2. Amend subrule 12.2(3) as follows:

12.2(3) *Timely claims required.* Claims submitted prior to the date of service shall be returned to the claimant unpaid and may be resubmitted to the state public defender after the date of service. Claims that are not submitted within 45 days of the date of service as defined in this subrule may be denied, in whole or in part, as untimely unless the delay in submitting the claim is excused by paragraph 12.2(3) “f.” Attorney fees and expenses that are submitted on a claim denied as untimely under this subrule may be resubmitted on a subsequent claim that is timely submitted with respect to a subsequent date of service in the same case. For purposes of this subrule, a probation, parole, or contempt proceeding is not the “same case” as the underlying proceeding.

a. Adult claims. For adult claims, “date of service” means the date of filing of an order indicating that the case was dismissed or the client was acquitted, the date of the expiration of the time for appeal from a judgment of conviction, the date of filing of an order granting a deferred judgment or prosecution, the date of filing of a final order in a postconviction relief case, the date of mistrial, the date on which a warrant was issued for the client, or the date of filing of a court order authorizing the attorney’s withdrawal from a case prior to the date of a dismissal, acquittal, sentencing, or mistrial. The filing of a notice of appeal is not a date of service; however, if a notice of appeal is filed after a conviction and the attorney moves to withdraw to have appellate counsel appointed, the date of service is the date of filing of the withdrawal order. If a motion for reconsideration is filed, either the date of filing of the motion or the date on which the court rules on that motion is the date of service. In a probation, parole or contempt proceeding, the date of service is the date of filing of the disposition order or an order granting a continued disposition. In a subsequent review or compliance proceeding under the same appointment, a new date of service is created if the new proceeding generates an order. In a probation revocation proceeding that results in the revocation of a deferred judgment, a judgment of conviction is entered and the date of service is the date of the expiration of the time for appeal. For interim adult claims authorized by subrule 12.3(3) or 12.3(4), the date of service is the last day on which the attorney claimed time on the itemization of services.

b. No change.

c. Appellate claims. For appellate claims, “date of service” means ~~the date on which the case was dismissed,~~ the date of a court order authorizing the attorney’s withdrawal prior to the filing of the proof brief, the date on which the proof brief was filed, or the date on which the procedendo was issued.

d. to f. No change.

ITEM 3. Amend subrule 12.3(1) as follows:

12.3(1) *Juvenile cases.* An initial claim for services in a juvenile case may be submitted after the dispositional hearing, if any. Subsequent claims may be submitted after each court hearing that is a date of service held in the case. A court hearing does not include family drug court, family team meetings, staffings or foster care review board hearings.

ITEM 4. Amend rule 493—12.4(13B,815) as follows:

493—12.4(13B,815) Rate of compensation.

12.4(1) Unless the attorney has a contract that provides for a different manner or rate of payment, the following hourly rates shall apply to payment of all claims for cases to which the attorney was appointed after June 30, 1999, and before July 1, 2006:

Attorney time:	Class A felonies	\$60/hour
	Class B felonies	\$55/hour
	All other criminal cases	\$50/hour
	All other cases	\$50/hour
Paralegal time:		\$25/hour

Unless the attorney has a contract that provides for a different manner or rate of payment, the following hourly rates shall apply to payment of all claims for cases to which the attorney was appointed after June 30, 2006, and before July 1, 2007:

Attorney time:	Class A felonies	\$65/hour
	All other criminal cases	\$60/hour
	All other cases	\$55/hour
Paralegal time:		\$25/hour

Unless the attorney has a contract that provides for a different manner or rate of payment, the following hourly rates shall apply to payment of all claims for cases to which the attorney was appointed after June 30, 2007, and before July 1, 2019:

Attorney time:	Class A felonies	\$70/hour
	Class B felonies	\$65/hour
	All other criminal cases	\$60/hour
	All other cases	\$60/hour
Paralegal time:		\$25/hour

Unless the attorney has a contract that provides for a different manner or rate of payment, the following hourly rates shall apply to payment of all claims for cases to which the attorney was appointed after June 30, 2019:

<u>Attorney time:</u>	<u>Class A felonies</u>	<u>\$73/hour</u>
	<u>Class B felonies</u>	<u>\$68/hour</u>
	<u>All other criminal cases</u>	<u>\$63/hour</u>
	<u>All other cases</u>	<u>\$63/hour</u>
<u>Paralegal time:</u>		<u>\$25/hour</u>

12.4(2) Payable paralegal time is limited in rule 493—7.1(13B,815).

12.4(1) *Applicability to juvenile cases.* In a juvenile case to which the attorney was appointed before July 1, 1999, the state public defender will pay the attorney \$50 per hour for all services performed following the dispositional hearing or the first regularly scheduled review hearing occurring after June 30, 1999. In a juvenile case to which the attorney was appointed after June 30, 1999, but before July 1, 2006, the state public defender will pay the attorney \$55 per hour for all services performed following the dispositional hearing or the first regularly scheduled review hearing occurring after June 30, 2006. In

a juvenile case to which the attorney was appointed after June 30, 2006, but before July 1, 2007, the state public defender will pay the attorney \$60 per hour for all services performed following the dispositional hearing or the first regularly scheduled review hearing occurring after June 30, 2007. However, the attorney must file separate claims for services before and after said hearing. If a claim is submitted with two hourly rates on it, the claim will be paid at the lower applicable rate.

12.4(2) *Appointments before July 1, 1999.* In a case to which the attorney was appointed before July 1, 1999, attorney time shall be paid at a rate that is \$5 per hour less than the rates established pursuant to 2000 Iowa Acts, chapter 1115, section 10. Claims for compensation in excess of these rates are not payable under the attorney's appointment and will be reduced.

12.4(3) *Applicability to appellate contracts.* Rescinded IAB 6/25/14, effective 7/30/14.

12.4(4) ~~12.4(3)~~ *All other cases.* As used in this rule, the term "all other cases" includes appeals, juvenile cases, contempt actions, representation of material witnesses, and probation/parole violation cases, postconviction relief cases, restitution, extradition, and sentence reconsideration proceedings without regard to the level of the underlying charge.

ITEM 5. Amend subrule 12.6(1) as follows:

12.6(1) *Adult cases.* The state public defender establishes attorney fee limitations for the number of hours of combined attorney time and paralegal time that may be claimed for the following categories of adult cases:

Class A felonies	\$18,000 <u>258</u>
Class B felonies	\$3,600 <u>56</u>
Class C felonies	\$1,800 <u>30</u>
Class D felonies	\$1,200 <u>20</u>
Aggravated misdemeanors	\$1,200 <u>20</u>
Serious misdemeanors	\$600 <u>10</u>
Simple misdemeanors	\$300 <u>5</u>
Simple misdemeanor appeals to district court	\$300 <u>5</u>
Contempt/show cause proceedings	\$300 <u>5</u>
Proceedings under Iowa Code chapter 229A	\$10,000 <u>167</u>
Probation/parole violation	\$300 <u>5</u>
Extradition	\$300 <u>5</u>
Postconviction relief—the greater of \$1,000 <u>17</u> hours or one-half of the fee limitation for the conviction from which relief is sought.	

Nothing in this subrule is intended to in any manner diminish, increase, or modify the state public defender's authority to review any and all claims for services as authorized by the Iowa Code.

The fee limitations are applied separately to each case, as that term is defined in rule 493—7.1(13B,815). If more than one charge is included within a case, the charge with the higher fee limitation will apply to the entire case.

For example, in an adult criminal proceeding, if an attorney were appointed to represent a client charged with four counts of forgery arising at four separate times, and if the client were charged in four separate trial informations, the fee limitations for each charge would apply separately. If all four charges were contained in one trial information, the fee limitation would be \$1,200 30 hours even if there were more than one separate occurrence. If Similarly, if the attorney were appointed to represent a person charged with a drug offense and failure to possess a tax stamp, the fee limitation would be the limitation for the offense with the higher limitation, not the total of the limitations. As a further example, multiple probation revocation proceedings pending at the same time, involving the same client, and arising from

the same transaction or occurrence are still a single “case” for purposes of this rule, and the five-hour fee limitation applies.

If the Iowa Code section listed on the claim form defines multiple levels of crimes and the claimant does not list the specific level of crime on the claim form, the state public defender will use the least serious level of crime in reviewing the claim.

For example, Iowa Code section 321J.2 defines crimes ranging from a serious misdemeanor to a Class D felony. If the attorney does not designate the subsection defining the level of the crime, the state public defender will deem the charge to be a serious misdemeanor.

ITEM 6. Amend subrule 12.6(2) as follows:

12.6(2) *Juvenile cases.* The state public defender establishes attorney fee limitations for the number of hours of attorney time that may be claimed for the following categories of juvenile cases:

Delinquency (through disposition)	\$1,200 <u>20</u>
Child in need of assistance (CINA) (through disposition)	\$1,200 <u>20</u>
Termination of parental rights (TPR) (through disposition)	\$1,800 <u>30</u>
Juvenile court review and other postdispositional court hearings	\$300 <u>5</u>
Judicial bypass hearings	\$180 <u>3</u>
Juvenile commitment hearings	\$180 <u>3</u>
Juvenile petition on appeal	\$600 <u>10</u>
Motion for further review after petition on appeal	\$300 <u>5</u>

Nothing in this subrule is intended to in any manner diminish, increase, or modify the state public defender’s authority to review any and all claims for services as authorized by the Iowa Code.

The fee limitations are applied separately to each case, as that term is defined in rule 493—7.1(13B,815).

For example, in a juvenile proceeding in which the attorney represents a parent whose four children are the subject of four child in need of assistance petitions, if the court handles all four petitions at the same time or the incident that gave rise to the child in need of assistance action is essentially the same for each child, the fee limitation for the attorney representing the parent is ~~\$1,200~~ 20 hours for all four proceedings, not ~~\$1,200~~ 20 hours for each one.

For a child in need of assistance case that becomes a termination of parental rights case, the fee limitations shall apply to each case separately. For example, the attorney could claim up to ~~\$1,200~~ 20 hours for the child in need of assistance case and up to ~~\$1,800~~ 30 hours for the termination of parental rights case.

In a delinquency case, if the child has multiple petitions alleging delinquency and the court handles the petitions at the same time, the fee limitation for the proceeding is the fee limitation for one delinquency.

In a juvenile case in which a petition on appeal is filed, the appointed trial attorney does not need to obtain a new appointment order to pursue a petition on appeal. The claim, through the filing of a petition on appeal, must be submitted on a Juvenile form. If an appellate court orders full briefing, the attorney fee claim for services subsequent to an order requiring full briefing must be submitted on an Appellate form and is subject to the rules governing appeals.

ITEM 7. Amend rule 493—12.7(13B,815) as follows:

493—12.7(13B,815) Reimbursement for specific expenses.

12.7(1) The state public defender shall reimburse the attorney for the payments made by the attorney for necessary certified shorthand reporters, investigators, foreign language interpreters, evaluations, and experts, if the following conditions are met:

a. The attorney obtained court approval for a certified shorthand reporter, investigator, foreign language interpreter, evaluation or expert prior to incurring any expenses with regard to each.

b. A copy of each of the following documents is attached to the claim:

(1) The application and court order authorizing the expenditure of funds at state expense for the certified shorthand reporter, investigator, foreign language interpreter, evaluation, or expert. If the reimbursement is for expenses incurred by a privately retained counsel representing an indigent person, the procedures and requirements of rule 493—13.7(13B,815) shall apply to the application and issuance of the order and the application and order shall be in compliance with that rule, the other requirements of 493—Chapter 13, and this rule.

(2) If the expenses are for services of investigators, foreign language interpreters, or experts, a court order setting the maximum dollar amount of the claim. If the initial court order authorizing the expenditure sets the maximum amount of the claims, a subsequent order is unnecessary.

(3) An itemization detailing the expenses incurred, the services rendered, the date(s) on which the services were rendered, the time spent on each date, and the manner in which the amount of the claim for services was calculated.

(4) If the expenses are for foreign language interpreters, the court order and itemization required by subparagraphs 12.7(1) “*b*” (2) and (3) shall be submitted on the Fee Itemization Form and Court Order Approving Claim for Court Interpreter Services form promulgated by the judicial branch.

(5) If the expenses are for a certified shorthand reporter, any additional documentation required in 493—paragraph 13.2(4) “*b*” when applicable to the services provided.

(6) Documentation that the attorney has already paid the funds to the certified shorthand reporter, investigator, foreign language interpreter, provider of an evaluation, or expert.

c. to e. No change.

12.7(2) Nothing contained in this rule is intended to require the attorney to provide notice to any other party prior to seeking such an order, except the notice to the state public defender expressly required in rule 493—13.7(13B,815) if the reimbursement is for expenses incurred by privately retained counsel representing an indigent person, or to require the attorney to disclose confidential information, work product, or trial strategy in order to obtain the order.

12.7(3) In an appeal, the state public defender will pay the cost of obtaining the transcript of the trial records and briefs. In such instance, subrule 12.7(1) shall apply.

12.7(4) Claims for expenses that do not meet these conditions are not payable under the attorney’s appointment or rule 493—13.7(13B,815) and will be denied.

ITEM 8. Amend rule 493—12.8(13B,815) as follows:

493—12.8(13B,815) Reimbursement of other expenses.

12.8(1) The state public defender shall reimburse the attorney for the following out-of-pocket expenses incurred by the attorney in the case to the extent that the expenses are reasonable and necessary:

a. Mileage for automobile travel at the rate of 39 cents per mile. The number of miles driven each day shall be separately itemized on the itemization of services, specifying the date of the travel, the origination and destination locations, the total number of miles traveled that day and, if it is not otherwise clear from the itemization, the purpose of the travel. If the travel is to perform services for multiple clients on the same trip, the mileage must be split proportionally between each client and the itemization must note the manner in which the mileage is split. The total miles traveled for the case shall also be listed on the claim form. Other forms of transportation costs incurred by the attorney may be reimbursed only with prior approval from the state public defender.

b. to i. No change.

None of the expenses specified in this rule shall be reimbursed to a privately retained attorney representing an indigent person unless there is prior approval by the state public defender upon a showing of reasonable necessity.

12.8(2) If the reimbursement is for expenses incurred by a privately retained counsel representing an indigent person, the procedures and requirements of rule 493—13.7(13B,815) shall apply to the application and issuance of the order, the application and order allowing reimbursement of these expenses

shall be in compliance with that rule in addition to the requirements of this rule, and a copy of the application and order entered pursuant to rule 493—13.7(13B,815) shall be attached to the claim.

~~12.8(2)~~ **12.8(3)** Claims for expenses other than those listed in this rule or at rates in excess of the rates set forth in this rule are not payable under the attorney's appointment or under rule 493—13.7(13B,815) and will be reduced or denied.

ITEM 9. Amend rule 493—13.2(815) as follows:

493—13.2(815) Claims for other professional services. The state public defender shall review and approve claims for necessary and reasonable expenses for investigators, foreign language interpreters, expert witnesses, certified shorthand reporters, and medical/psychological evaluations if the claimant has a form W-9 on file with the department and the claim conforms to the requirements of this rule. Claims that do not comply with this rule will be returned.

13.2(1) Claims for investigative services. The state public defender shall review, approve and forward for payment claims for necessary and reasonable expenses for investigators if the following conditions are met:

~~a.~~ The investigator submits a signed original and one copy of a claim containing the following information:

~~(1) The case name, case number and county in which the action is pending.~~

~~(2) The name of the attorney for whom the services were provided.~~

~~(3) The date on which services commenced.~~

~~(4) The date on which services ended.~~

~~(5) The total number of hours claimed.~~

~~(6) The total amount of the claim.~~

~~(7) The claimant's name, address, social security number or federal tax identification number, and telephone number.~~

~~b. a.~~ Court approval to hire the investigator was obtained before any expenses for the investigator were incurred.

~~c. b.~~ One copy of each of the following documents is attached to the claim:

~~(1) The application and order granting authority to hire the investigator.~~

~~(2) The order appointing counsel. This order is unnecessary if the attorney is not court-appointed but the court, in granting the application noted above, determines that, although the client is able to employ counsel, funds are not available to the client to pay for the necessary investigation and there is an order attached approving payment of the investigative services pursuant to rule 493—13.7(13B,815).~~

~~(3) An itemization of the investigator's services detailing the expenses incurred, the services rendered, the date(s) on which the services were rendered, the time spent on each date, the hourly rate, and the manner in which the amount of the claim for services was calculated. Except in exceptional circumstances and with the prior approval of the state public defender upon a showing of reasonable necessity, an investigator's rate shall not exceed \$75 per hour. Itemized receipts for expenses must be attached.~~

~~(4) A court order setting the maximum dollar amount of the claim. For purposes of this subrule, if the court order that authorizes hiring the investigator sets a limit for the claim, this court order is unnecessary.~~

c. Reasonable and necessary investigative services include, but are not limited to, locating witnesses, interviewing witnesses, process service, viewing the crime scene, reviewing documents or photographs, meeting with attorneys, meeting with clients, and creating investigative reports. Clerical work or running errands for the attorney or defendant is not considered investigative work.

d. Timely claims required. Claims for services are timely if submitted to the state public defender for payment within 45 days of completion of services in the most recent date that investigative services were performed for the case. Claims that are not timely shall be denied.

13.2(2) Claims for foreign language interpreters. The state public defender shall review, approve and forward for payment claims for necessary and reasonable expenses for foreign language interpreters in accordance with the administrative directive of the state court administrator in the matter of court

interpreter compensation, ~~effective September 1, 2007~~ in effect at the time the claim is made, if the following conditions are met:

~~a. The interpreter submits a signed original and one copy of a claim containing the following information:~~

~~(1) The case name, case number and county in which the action is pending.~~

~~(2) The name of the attorney for whom the services were provided.~~

~~(3) The date on which services commenced.~~

~~(4) The date on which services ended.~~

~~(5) The total number of hours claimed.~~

~~(6) The total amount of the claim.~~

~~(7) The claimant's name, address, social security number or federal tax identification number, E-mail address, if any, and telephone number.~~

~~b. a.~~ Court approval to hire the interpreter was obtained before any expenses for the interpreter were incurred.

~~c. b.~~ One copy of each of the following documents is attached to the claim:

~~(1) The application and order appointing the interpreter. This appointment is presumed to continue until the conclusion of the matter, unless limited by the court or modified by a subsequent order.~~

~~(2) The order appointing counsel. This order is unnecessary if the attorney is not court-appointed but the court, in granting the application for the appointment of the interpreter, makes one of the following specific findings: and there is an order attached approving payment of the foreign language interpreter pursuant to rule 493—13.7(13B,815).~~

~~1. The client is indigent, or~~

~~2. Although the client is able to employ counsel, funds are not available to the client to pay for necessary interpreter services.~~

~~(3) An itemization of the interpreter's services detailing the expenses incurred, the services rendered, the date(s) on which the services were rendered, the time spent on each date including the time services began and ended on each day, and the manner in which the amount of the claim for services was calculated. With regard to expenses and services, the following shall apply:~~

~~1. Receipts for parking expenses are reimbursed pursuant to the Judicial Branch Administrative Directive on Court Interpreter and Translator Compensation Policies.~~

~~2. Claims for translating documents will be paid pursuant to the Judicial Branch Administrative Directive on Court Interpreter and Translator Compensation Policies.~~

~~(4) A court order setting the maximum dollar amount of the claim.~~

~~d. c.~~ Timely claims required. Claims for services are timely if, within 45 days of completion of services, either the claim is submitted to the state public defender for payment or the Fee Itemization Form and Court Order Approving Claim for Court Interpreter Services are filed with the clerk of court in the case. Claims that are not timely submitted shall be denied.

13.2(3) Claims for expert witnesses. The state public defender shall review, approve and forward for payment claims for necessary and reasonable expenses for expert witnesses if the following conditions are met:

~~a. The expert witness submits an original and one copy of a signed claim containing the following information:~~

~~(1) The case name, case number and county in which the action is pending.~~

~~(2) The name of the attorney for whom the services were provided.~~

~~(3) The date on which services commenced.~~

~~(4) The date on which services ended.~~

~~(5) The total number of hours claimed.~~

~~(6) The total amount of the claim.~~

~~(7) The claimant's name, address, social security number or federal tax identification number, and telephone number.~~

~~b. a.~~ Court approval to hire the expert witness was obtained before any expenses for the expert witness were incurred.

~~e.~~ *b.* One copy of each of the following documents is attached to the claim:

(1) The application and order granting authority to hire the expert witness.
(2) The order appointing counsel. This order is unnecessary if the attorney is not court-appointed ~~but the court, in granting the application noted above, determines that, although the client is able to employ counsel, funds are not available to the client to pay for necessary expert witness services and there is an order attached approving payment of the expert witness pursuant to rule 493—13.7(13B,815).~~

(3) An itemization of the expert witness's services detailing the expenses incurred, the services rendered, the date(s) on which the services were rendered, the time spent on each date, and the manner in which the amount of the claim for services was calculated.

(4) A court order setting the maximum dollar amount of the claim. For purposes of this subrule, if the court order that authorizes hiring the expert sets a limit for the claim, this court order is unnecessary.

(5) If the expert charges a "minimum" amount for services based on a specific time, a certification by the expert that no other services have been performed or charges made by the expert for any portion of that specific time.

13.2(4) Claims for certified shorthand reporters. The state public defender shall review, approve and forward for payment claims for necessary and reasonable expenses for depositions and transcripts provided by certified shorthand reporters only in accordance with the requirements of this subrule.

a. Claim form. ~~The~~ When a written claim form for certified shorthand reporting is required under these rules, the certified shorthand reporter shall submit a signed original and one copy of a miscellaneous claim form containing the following information:

- (1) The case name, case number and county in which the action is pending.
- (2) The name of the attorney for whom the services were provided.
- (3) The date on which the transcript was ordered.
- (4) The date on which the transcript was delivered.
- (5) The total amount of the claim.
- (6) The claimant's name; address; social security number, federal tax identification number or vendor identification number; ~~e-mail~~ email address, if any; and telephone number.

b. Required documentation. One copy of each of the following documents must be attached to the claim:

- (1) The court order granting authority to hire the certified shorthand reporter at state expense.
- (2) The order appointing counsel. This order is unnecessary if the attorney is not court-appointed ~~but the court, in granting authority to hire the certified shorthand reporter, determines that, although the client is able to employ counsel, funds are not available to the client to pay for necessary certified shorthand reporter services and there is an order attached approving payment of the certified shorthand reporter pursuant to rule 493—13.7(13B,815).~~

~~(3) Itemization of services. If the transcript is for a deposition, the itemization must include the date of deposition, persons deposed, arrival and departure time at the deposition, number of pages and the cost per page, travel time and listing of any other charges. If the transcript is for an audio or video recording, the itemization must include a description of the recording being transcribed, the length of the recording transcribed, the number of pages and the cost per page, and a listing of any other charges.~~

(4) ~~(3)~~ If expedited transcript rates are claimed under subparagraph 13.2(4) "d"(10), an ~~e-mail~~ email or other written statement from the attorney explaining that expedited delivery is required.

~~(5) (4)~~ If a cancellation fee is claimed under subparagraph 13.2(4) "d"(6), documentation of the date and time that notice of cancellation was given.

~~(6) (5)~~ If the certified shorthand reporter is a state employee, a certification by the certified shorthand reporter that none of the time for which the claim is being submitted is time for which the certified shorthand reporter was being paid by the state.

c. to e. No change.

f. Designation of preferred certified shorthand reporter. The state public defender may enter into a contract with one or more certified shorthand reporters to provide court reporting services for depositions in one or more counties and may designate such certified shorthand reporters to be the preferred certified shorthand reporters in the respective counties. Such designations shall be provided to the chief judge

of the judicial district for the respective counties and shall be summarized on the ~~Web site~~ website of the state public defender, ~~http://spd.iowa.gov~~ spd.iowa.gov. Claims for services provided in a county in which the state public defender has designated a certified shorthand reporter as the preferred certified shorthand reporter shall be denied unless the claims are submitted by the certified shorthand reporter pursuant to the terms of the contract or are submitted by another certified shorthand reporter and include written documentation that the designated certified shorthand reporter was unavailable to handle the deposition.

13.2(5) *Claims for court-ordered evaluations.* The state public defender shall review, approve and forward for payment claims for necessary and reasonable evaluations requested by an appointed attorney only if the purpose of the evaluation is to establish a defense, to determine whether an indigent is competent to stand trial, or to evaluate a defendant at sentencing or resentencing who has been charged as an adult for a felony alleged to have been committed while a juvenile, if the offense has a potential mandatory minimum sentence of imprisonment, and not for any other purpose nor in any other circumstance for sentencing or placement. Additionally, a claim for a court-ordered evaluation will be approved only if the following conditions are met:

~~a. The person performing the evaluation submits a signed original and one copy of a claim containing the following information:~~

~~(1) The case name, case number and county in which the action is pending.~~

~~(2) The name of the attorney for whom the services were provided.~~

~~(3) The date on which services commenced.~~

~~(4) The date on which services ended.~~

~~(5) The total number of hours claimed.~~

~~(6) The total amount of the claim.~~

~~(7) The claimant's name, address, social security number or federal tax identification number, and telephone number.~~

~~b. a.~~ Court approval to conduct the evaluation was obtained before any expenses for the evaluation were incurred.

~~c. b.~~ One copy of each of the following documents is attached to the claim:

~~(1) The application and order granting authority to conduct the evaluation. This order must specify that the purpose of the evaluation is for a permissible purpose under this subrule.~~

~~(2) The order appointing counsel. This order is unnecessary if the attorney is not court-appointed but the court, in granting the application noted above, determines that, although the client is able to employ counsel, funds are not available to the client to pay for the evaluation and there is an order attached approving payment of the evaluation pursuant to rule 493—13.7(13B,815).~~

~~(3) An itemization of the evaluator's services detailing the expenses incurred, the services rendered, the date(s) on which the services were rendered, the time spent on each date, and the manner in which the amount of the claim for services was calculated.~~

~~(4) A court order setting the maximum dollar amount of the claim. For purposes of this subrule, if the court order authorizing the evaluation sets a limit for the claim, this court order is unnecessary.~~

~~(5) If the evaluator charges a "minimum" amount for services based on a specific time, a certification by the evaluator that no other services have been performed or charges made by the evaluator for any portion of that specific time.~~

13.2(6) The state public defender may reimburse services and expenses not specifically listed in this chapter that are payable pursuant to rules 493—12.7(13B,815) and 493—12.8(13B,815).

13.2(6) 13.2(7) *Submission of claims.* ~~Claims for payment for professional services provided to a public defender must be submitted to the local public defender office for which the services were provided.~~

~~a.~~ With the exception of judicial branch certified shorthand reporters, claims submitted on or after March 1, 2020, shall be submitted electronically via the online claims website: spdclaims.iowa.gov. Effective March 1, 2020, with the exception of judicial branch certified shorthand reporter claims, any reference in these rules to forms or to claims submissions shall refer to the respective claims submission page for miscellaneous claims on the online claims website. The state public defender, at the state public

defender's sole discretion, may grant limited exceptions to the requirement that claims be submitted electronically via the online claims website. Other claims for professional services must be submitted, on a form promulgated by the state public defender, to the state public defender at the following address: State Public Defender, Claims, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319.

b. Claims for the payment of services to public defenders provided either by judicial branch certified shorthand reporters or by claimants granted an exception to online claim submission, must be submitted to the local public defender office for which the services were provided. Other judicial branch certified shorthand reporter claims, claimants granted an exception to online claim submission, or claims submitted prior to March 1, 2020, must be submitted on a form, promulgated by the state public defender, to the state public defender at the following address: State Public Defender, Claims, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319.

~~13.2(7)~~ **13.2(8)** *Claims from state employees.* Claims submitted by state of Iowa employees must be submitted on a form promulgated by the state public defender and on a state travel voucher form.

~~13.2(9)~~ *Claim form for other professional services.* Rescinded IAB 1/3/07, effective 2/7/07.

ITEM 10. Adopt the following new rule 493—13.7(13B,815):

493—13.7(13B,815) Payment of costs incurred by privately retained attorney representing indigent person. No payment of state funds for the costs incurred in the legal representation of an indigent person shall be authorized or paid unless the requirements of this rule are satisfied.

13.7(1) Application for payment. An application or motion for the payment of state funds for the costs incurred in the legal representation of an indigent person that is submitted by the privately retained attorney shall be filed with the court in the county in which the case was filed and include all of the following:

- a. A copy of the attorney's fee agreement for the representation, including hourly rate, amount of retainer or other moneys received, and number of hours of work completed by the attorney to date.
- b. A showing that the costs are reasonable and necessary for the representation of the indigent person in a case for which counsel could have been appointed under Iowa Code section 815.10.
- c. An itemized accounting of all compensation paid to the attorney including the amount of any retainer.
- d. The amount of compensation earned by the attorney.
- e. Information on any expected additional costs to be paid or owed by the indigent person to the attorney for the representation.
- f. A signed financial affidavit completed by the indigent person.

13.7(2) Copy of application to state public defender. The privately retained attorney shall submit a copy of the application or motion and all attached documents to the state public defender.

13.7(3) Response of state public defender. If the state public defender resists the motion in whole or in part, the state public defender shall file a response to the application or motion within ten days of the state public defender's receipt of the application or motion.

13.7(4) Requirements for authorization and payment. The court shall not grant the application or motion authorizing all or a portion of the payment to be made from state funds unless the court determines, after reviewing the application, any supporting documents, and any response from the state public defender pursuant to subrule 13.7(3), that all of the following apply:

- a. The represented person is indigent and unable to pay for the costs sought to be paid.
- b. The costs are reasonable and necessary for the representation of the indigent person in a case for which counsel could have been appointed under Iowa Code section 815.10.
- c. The moneys paid or to be paid to the privately retained attorney by or on behalf of the indigent person are insufficient to pay all or a portion of the costs sought to be paid from state funds.

(1) In determining whether the moneys paid or to be paid to the attorney are insufficient for purposes of this paragraph, the court shall add the hours previously worked to the hours expected to be worked to finish the case and multiply that sum by the hourly rate of compensation specified in rule 493—12.4(13B,815) for the type of case in which the costs are requested.

(2) If the product calculated in subparagraph 13.7(4) “c”(1) is greater than the moneys paid or to be paid to the attorney by or on behalf of the indigent person, the moneys shall be considered insufficient to pay all or a portion of the costs sought to be paid from state funds.

(3) If the private attorney is retained on a flat fee agreement and a precise record of hours worked is not available, the attorney shall provide the court a reasonable estimate of the time expended to allow the court to make the calculation pursuant to this paragraph.

13.7(5) *Opportunity to request a hearing and hearing on the application.* The state public defender shall be afforded reasonable notice and opportunity to respond to the motion and participate in any hearing on the application or motion. Either the privately retained attorney for the indigent person or a representative from the office of the state public defender may participate in a hearing on the application or motion by telephone.

13.7(6) *Protection of defense strategy and work product.* In considering and ruling on the application or motion, the court shall order appropriate procedures to protect against disclosure of defense strategy and defense work product to the prosecution, including but not limited to allowance of information or filings, or portions thereof, to be submitted in camera, ex parte hearings, sealing of any transcript or order to avoid such disclosure, protective orders, or other safeguards to protect defense strategy and work product from disclosure to the prosecution.

13.7(7) *Order on the application.* If the court finds the payment of the costs incurred or to be incurred by a privately retained attorney are reasonable and necessary, the order of the court shall specify the maximum amount of costs which the attorney may incur without further court order, and that the actual amount of such costs to be allowed are subject to review by the state public defender for reasonableness.

13.7(8) *Submission of claim for payment to state public defender.* Following entry of an order allowing costs to be incurred by a privately retained attorney representing an indigent person, the attorney or the service provider may seek payment or reimbursement for costs. The attorney shall submit a claim in accordance with rules 493—12.7(13B,815) and 493—12.8(13B,815). The service provider shall submit a claim in accordance with 493—Chapter 13.

13.7(9) *Denial of application for noncompliance.* If the privately retained attorney or claimant seeking payment or reimbursement for costs pursuant to this rule fails to comply with the requirements of this rule, the state public defender may deny all or a part of the costs requested.

13.7(10) *Applicability of rule.* This rule applies to payments to witnesses under Iowa Code section 815.4, evaluators, investigators, and certified shorthand reporters, and to other costs incurred by a privately retained attorney in the legal representation of the indigent person. This rule does not apply to payment of costs on behalf of an indigent person represented on a pro bono basis.

[Filed 12/26/19, effective 3/1/20]

[Published 1/15/20]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 1/15/20.